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ARIZONA LUXURY TAX PROCEDURE LTP 15-2

Procedure for Requesting Authorization to Submit Alternate Proof to
Establish Entitlement to a Rebate of Taxes Paid on Tobacco Products

(Rescinds and supersedes LTN 15-3)

ISSUE:

This document provides a licensed tobacco distributor with guidance on requesting authorization to submit proof other than the required retailer report to establish entitlement to a rebate of taxes paid on tobacco products.

APPLICABLE LAW:

A.R.S. § 42-3406(A) provides that, with limited exception, a distributor requesting a rebate of taxes paid on tobacco products must establish entitlement to the rebate by obtaining a report executed by the retailer that purchased the tobacco products on which the distributor paid taxes. The report must indicate: (i) the name and address of the retailer, (ii) the quantities of tobacco products sold, separated by tax category, and (iii) information necessary to establish the appropriate amount of rebate.

A.R.S. § 42-3406(A)(1) provides that the report shall be provided in the form and manner prescribed by the Department.

A.R.S. § 42-3406(A)(2) provides that the burden of proof for the rebate is on the distributor.

A.R.S. § 42-3406(B) provides that in its discretion and in circumstances where a retailer is uncooperative or no longer in business, the Department may accept proof other than a report executed by the retailer if the distributor shows, to the satisfaction of the Department, that it exercised ordinary business care and prudence but was unable to furnish the report. Acceptable forms of proof presented by the distributor must consist of books, records or papers maintained by the distributor or retailer in the regular course of business.

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PROCEDURE:

To establish entitlement to a rebate of taxes paid on tobacco products, licensed distributors are required to obtain and submit a report executed by the retailer that purchased the tobacco products upon which the rebate request is based ("Retailer Report"). With limited exception, a properly completed Retailer Report must accompany any request for a rebate of taxes paid on tobacco products. The Arizona Department of Revenue ("Department") has proscribed Arizona Form 845-CIG and Arizona Form 845-OTP to facilitate compliance with this requirement.

In the event a retailer is uncooperative or has gone out of business, a licensed distributor may request authorization to submit proof other than the required Retailer Report to establish its entitlement to a rebate of taxes paid on tobacco products.

To request authorization, the distributor must submit the following to the Department:

1. a written statement describing the efforts made to obtain the required Retailer Report and showing that, despite exercising ordinary business care and prudence, the distributor was unable to submit a report executed by the retailer¹; and
2. evidence that the retailer is either uncooperative or out of business. Such evidence may include either a written refusal to comply from the retailer or a

¹ The Department will develop and post a standardized form for this purpose on its website available at www.azdor.gov. Once posted, distributors must use the form proscribed by the Department to request authorization to submit alternate proof to establish entitlement to a rebate.

The following is an example of a sufficient showing that the distributor exercised ordinary business care and prudence in its efforts to obtain the required Retailer Report:

The distributor sent a written request to the retailer via certified mail requesting an executed Retailer Report, as evidenced by a copy of the letter and the certified mail receipt indicating that the request was sent to the retailer's current business address. If the retailer was nonresponsive, the distributor sent a second request via certified mail before seeking authorization to submit alternate proof to support its rebate request.

In its discretion, the Department may require additional efforts or evidence to support a showing of ordinary business care and prudence.

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statement executed by the distributor certifying that the retailer is either uncooperative or no longer in business.

In order to submit a rebate request electronically through Arizona Luxury Tax Online², distributors must upload either: (i) a properly completed Arizona Form 845-CIG or 845-OTP executed by the retailer; or (ii) each of the items described above with their online request.

If the request is not made electronically, the written request and supporting evidence must be accompanied by a properly completed Arizona Form 840-A or 840-B and mailed to:

Arizona Department of Revenue
Luxury Tax Unit
1600 W. Monroe – Division 19
Phoenix, AZ 85007

To expedite processing of the request, a distributor may upload or submit copies of books, records or papers maintained by the distributor or retailer in the regular course of business for the Department's consideration as alternate proof of its entitlement to a rebate. Records may include invoices produced and maintained by the distributor in the regular course of business.

Records must contain at least the following information:

1. the name and address of the retailer that purchased the tobacco products;
2. the quantities of tobacco products sold, separated by brand; and
3. the tax category of the tobacco products sold, including stamp color for cigarettes and product type for tobacco products other than cigarettes ("OTP").

Upon review of the request, supporting evidence and any books, records or papers submitted by the distributor, the Department will: (i) grant the request and issue the appropriate rebate based on the information provided; (ii) demand additional information or records necessary to determine entitlement to the rebate; or (iii) deny the request until the distributor establishes that it exercised ordinary business care and prudence in its efforts to obtain the required Retailer Report.

If a distributor's request to submit proof other than the required Retailer Report is granted for a particular retailer, the distributor may continue to submit alternate proof in support of rebate requests based on sales made to that retailer. If the Department determines that a reasonable basis exists for the distributor to make additional attempts

² Arizona Luxury Tax Online is available at <https://Luxury.AZTaxes.gov>.

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to obtain the required Retailer Report from a particular retailer, the Department will notify the distributor in writing. The Department will allow thirty (30) calendar days from the date of the notice for the distributor to either: (i) obtain a Retailer Report executed by the retailer; or (ii) submit a written statement detailing further efforts made to obtain the Retailer Report from the retailer, together with evidence that the retailer remains uncooperative. The distributor may continue to submit alternate proof in support of rebate requests based on sales made to that retailer during the thirty-day period.

David Raber, Director

Signed: September 3, 2015

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, cases law or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.